

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF GENERAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

LEO C.,

Claimant,

v.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. 2012040586

A Proceeding Under the
Lanterman Developmental Disabilities
Services Act

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, State of California, in Los Angeles on August 15, 2012.

Claimant Leo C. was represented by Audrey Schultz, Deputy Public Defender, County of Los Angeles. South Central Los Angeles Regional Center was represented by Johanna Arias-Bhatia, Fair Hearing Coordinator.

South Central Los Angeles Regional presented Exhibits 1 – 7 and the testimony of Sandra Watson, Ph.D., Chief of Clinical Services, and Thomas L. Carrillo, Ph.D., Psychologist. Claimant Leo C. presented Exhibit A and the testimony of Timothy Collister, Ph.D., Psychologist. The witnesses were each questioned on direct and cross-examination. The parties' exhibits were admitted into evidence under Welfare and Institutions Code section 4712, subdivision (i).

Documentary and oral evidence having been received, the Administrative Law Judge submitted this matter for decision on August 15, 2012, and finds as follows:

ISSUE

The issue presented for decision is whether claimant is eligible for regional center services on the basis of the developmental disability of mental retardation or a disabling condition that is closely related to mental retardation or requires treatment similar to that for mental retardation.

FACTUAL FINDINGS

1. Claimant Leo C. is 18 years old. He lives with his mother and sister and has a three-year-old daughter. Claimant was born approximately seven weeks premature and admitted into the hospital immediately upon birth due to prematurity and a low birth weight. He stayed in the hospital for more than three weeks. On May 19, 1994, claimant was discharged from the hospital in good condition after gaining weight. Before being discharged, claimant received a hearing screen and an ultrasound of his head, both of which were normal.

2. With regard to his developmental milestones, claimant's mother has reported that her son began crawling at eight months, sat unsupported at 12 months, and walked at 18 months. He said his first word at the age of one and began saying two word sentences seven months later. He learned to use the toilet and was "potty trained" by one and one-half years. Growing up, claimant did not have any major illnesses or seizures. He needs to wear eyeglasses due to nearsightedness but does not like to wear them.

3. (A) Claimant is eligible for special education due to a specific learning disability. He began receiving special education supports and services on or about June 2005 when he had his first individual education program (IEP) meeting with the Los Angeles Unified School District (school district). As set forth in his IEP dated June 15, 2009, which was the only substantive school document presented in this matter (Exh. 7), claimant was attending Santee Educational Complex, a comprehensive high school (Santee High School), and had achieved his goals in reading, written language, mathematics, English language development, vocational education, and behavioral support. However, claimant's learning disability in auditory processing continued to make it difficult for him to focus, complete tasks, and understand complex information, which then impeded his ability to succeed in the general education setting. Due to his learning disability, he was provided with certain accommodations, including small group instruction, extended time, repeated and simplified directions, and positive reinforcement. For the ensuing 2009-2010 school year, claimant was placed in special day classes at Santee High School for reading and mathematics for 60 percent of the school day and he was provided extended school year services.

(B) In reading, teachers reported that claimant was able to decode short and long vowel sounds and read “basic sight words” and some one syllable words with ease. He could read with good pacing and out loud but still needed to learn proper intonation and expression. He tried to sound out difficult words. After reading a passage, claimant was able to answer some basic questions to check his comprehension. For stories read together in class, he was able to identify the characters, setting, problem and solution, and theme of each story. Claimant had difficulty reading and decoding two to three syllable words and continued to struggle with some grade-level text.

(C) In written language, claimant displayed some strengths in that he had good writing skills and continued to improve his writing. He was able to write simple sentences while using correct punctuation. With the aid of a teacher, he could write a one paragraph essay. On the other hand, claimant needed to learn when to end a simple and compound sentences and to improve his spelling, punctuation, and capitalization skills; He also needed to work on being able to write a multi-paragraph essay independently and on improving his proofreading skills.

(D) Claimant’s strongest subject was mathematics. He was the best mathematics student in his special education classroom. He was able to perform basic problems in addition, subtraction, multiplication, and division. He could use positive and negative integers and fractions. On the other hand, claimant continued to have difficulty solving mathematics problems involving multiple steps, processes, or digits due to his processing deficit. In addition, he continued to have difficulty solving word problems due to his low reading ability. He needed more time to solve multiple-step mathematical problems.

(E) In vocational education, claimant continued to attend and participate in class and usually tried to make the best use of class time to complete assignments. He had a good attitude towards learning and participated in classroom discussions. He needed to improve on bringing necessary supplies with him to class, staying focused on tasks and assignments, and completing all of his work.

(F) Claimant attended the June 15, 2009 IEP meeting and signed the IEP document. In an interview one week prior to the meeting, he expressed an interest in becoming a professional soccer player.

4. (A) Based on Findings 3(A) – (F) and the testimony of the Chief of Clinical Services, claimant is functioning below his grade level and has deficits in reading and writing due, in part, to his disability in auditory processing. He has difficulty in focusing, completing tasks, and understanding complex information which impedes his ability to learn.

(B) Based on Findings 3(A) – (F) above, it was not established that claimant’s placement in special day classes meant that he was placed in a class, or given instruction, that was designed or meant for students with mental retardation. No evidence was presented regarding the curriculum in claimant’s special day class. The school district has a practice or policy in not administering standardized tests to students to assess cognitive functioning or general intellectual functioning.

(C) Based on Findings 3(A) – (F) above and the testimony of the Chief of Clinical Services, it was not established that claimant’s failures in bringing proper school supplies to class and in enrolling in a new school after being expelled from Santee High School demonstrated that he has deficits in self-direction. Claimant lived at home with his mother. His mother failed to enroll him in a new school.

5. (A) On January 31, 2012, an intake service coordinator from the Service Agency, Evelyn Perez, L.C.S.W., performed a social assessment of claimant by interviewing and obtaining information from claimant, his mother, psychiatric social worker, and deputy public defender. The intake service coordinator prepared a Social Assessment (Exh. 5). At the time of the social assessment, and since December 24, 2011, claimant was being held in a juvenile detention center; his attorney referred him to the Service Agency for a determination of his eligibility for regional center benefits based on suspected mental retardation.

(B) Claimant appeared for the interview with the intake service coordinator with a flat affect. He established eye contact and answered her questions. The intake service coordinator found claimant to be “highly engaging throughout the interview.” He provided information about his behaviors and current levels of functioning. His mother was also present during claimant’s interview and reported having concerns about her son’s delay in processing information. She added that her son was hospitalized earlier in a psychiatric facility due to anger problems and reported that her family had a history of mental retardation but not psychiatric conditions.

(C) Before his detention, claimant was living with his family and attended Friedman Occupational Center for a short time. He enrolled there on or about November 7, 2011, and left the school about three weeks later on or about November 22, 2012. Previously, he had been attending Santee High School but reportedly had been expelled due to frequent trancies and fighting. Claimant indicated he had been teased there. The principal at Santee High School had given claimant’s mother information for enrolling her son at a new school but she did not do so because she could not find the school. Claimant was receiving general educational services in the juvenile facility.

(D) With respect to his current levels of functioning, the intake service coordinator noted that claimant has no problems with his motor abilities or coordination. He can walk and run and throw and catch a ball. In the area of self-

help, claimant is able to prepare food independently and use a microwave oven. He can use a stove, but his mother prefers to supervise him while he uses a stove. He can make his bed, perform household chores, eat with utensils, drink from an open cup without spilling any liquid, and perform personal hygiene tasks such as bathing and dressing. Claimant indicated that, when he has a cut or scratch, he ignores the need for first aid. While his mother transports him to places, claimant can take public transportation on familiar routes. He has trouble in receiving change, but he can count and handle money without assistance and order and purchase food on his own. In the social domain, claimant reported he has different friends, some of whom were affiliated with gangs. His mother described her son as “outgoing.” Claimant can make friends and maintain friendships. He does not have a relationship with the mother of his daughter.

(E) In the emotional and behavioral domain, the intake service coordinator noted the report of claimant’s mother that her son is easily frustrated and gets angry. When angered, claimant throws objects and hits the wall although he stated he no longer exhibits such behaviors. In 2011, claimant became very upset and angry and broke furniture, a window, and a computer. The police were called and claimant was admitted to a psychiatric facility for three days for evaluation. Upon his discharge, claimant’s mother was advised that her son should have a mental evaluation, but she did not arrange for such evaluation because claimant felt he did not need mental health services. His mother reported that claimant has trouble focusing on one task at a time and adjusting to social and physical changes. Claimant is able to focus for a longer period of time if he enjoys the activity.

(F) In the cognitive domain, the intake service coordinator found that claimant is able to “associate time with events and actions;” identify body parts and the time; count backwards and by multiples of five and ten; and perform addition, subtraction, multiplication, and division, although he made errors in subtraction and division problems. Claimant can recognize simple words but struggled reading a simple book and understanding what he read. His mother reported that her son can remember a prompt if comprised of one instruction. In the communication domain, claimant is able to initiate and engage in conversation, use expressive and non-verbal communication, understand questions, and speak clearly in sentences.

(G) Following her social assessment, the intake service coordinator noted that claimant had a psychological assessment scheduled for the same day and recommended, in part, that all findings be presented to an interdisciplinary team at the Service Agency for a determination of claimant’s eligibility for regional center services.

6. (A) On January 31, 2012, on request of the Service Agency, Thomas L. Carrillo, Ph.D., conducted a psychological evaluation of claimant to determine whether he presented with developmental delays attributable to mental retardation and/or autistic spectrum disorder. There were no previous psychological evaluations

or tests for Dr. Carrillo to review. For his evaluation, Dr. Carrillo interviewed claimant and his mother, administered several psychological tests, and prepared a written report (Exh. 4). Claimant's mother provided background information about her son, who was 17 years and nine months old at the time of this evaluation.

(B) Dr. Carrillo observed that claimant was friendly and cooperative, made meaningful eye contact, and displayed "significant" communication skills. He had poor pronunciation skills and difficulty with word processing. Often, claimant hesitated before responding verbally in an effort to search for words so that he could communicate effectively. Because claimant made a reasonable and appropriate effort to respond, Dr. Carrillo concluded that the results of his psychological evaluation were a reasonable estimate of claimant's overall intellectual and adaptive functioning.

(C) In order to assess claimant's cognitive functioning, Dr. Carrillo administered the Wechsler Adult Intelligence Scale, Fourth Edition (Wechsler). Claimant scored consistently within the borderline range of delay. His lowest subtest score was in digit span and his highest subtest score was in arithmetic. Claimant scored composite scores of 68 in verbal comprehension, 75 in perceptual reasoning, 74 in working memory, and 84 in processing speed. Claimant's full-scale intelligence quotient (IQ) composite score was measured at 73, suggesting that his cognitive abilities are within the borderline range of delay. To further assess claimant's cognitive functioning based on academic achievement, Dr. Carrillo administered the Wide Range Achievement Test, Revision Three (WRAT). In reading, claimant attained a standard score of 52 that was equivalent to second grade. In spelling, he achieved a standard score of 65 that was equivalent to third grade. In mathematics, he attained a standard score of 74 that was equivalent to fifth grade. Dr. Carrillo found claimant's results on the WRAT suggested that he had written language disorder and a reading disorder and that his mathematics score is consistent with his cognitive potential. Comparing the results on the Wechsler and WRAT, Dr. Carrillo opined that claimant possesses cognitive abilities in the borderline range of delay.

(D) In communication skills functioning, Dr. Carrillo found claimant demonstrated considerably poor pronunciation skills and was difficult to understand. He had difficulty with word processing, for he often searched for the appropriate word to answer questions. On the Vineland Adaptive Behavior Scales (Vineland), claimant achieved a standard score of 64 in communication, which is within the mild range of delay. In receptive language and expressive language, claimant received scores equivalent to five years, 10 months, and 5 years, six months, respectively, suggesting he has delays in both areas. Dr. Carrillo opined that claimant's communication abilities are "lower than his cognitive potential," and he would qualify for a diagnosis of mixed receptive expressive language disorder.

(E) In adaptive and social skills functioning, Dr. Carrillo relied on the results from the Vineland. Claimant received a standard score of 66 in daily living skills and 64 in socialization, both of which are in the mild range of delay. He

achieved a composite score of 66 in adaptive behavior, which is also within the mild range of delay. Comparing claimant's scores in adaptive functioning, including communication, daily living skills, and socialization skills, Dr. Carrillo opined that claimant has overall adaptive skills in the mild range of delay.

(F) In affective and behavioral skills functioning, claimant presented as a fairly well-adjusted person. He did not display any behavior indicative of a psychiatric diagnosis.

(G) In summary, Dr. Carrillo found that claimant has significant delays in cognitive functioning, for his cognitive abilities are within the borderline range of delay. He also demonstrates a mild range of delay in communication, particularly in word processing, which affects his expressive and receptive language abilities. Dr. Carrillo opined, however, that claimant's abilities in expressive and receptive language were "below his potential." The psychologist diagnosed claimant with borderline intellectual functioning, mixed receptive-expressive language disorder, disorder of written expression, and a reading disorder. He recommended claimant receive remedial assistance to improve his reading, writing, and communication skills to a level consistent with his potential.

7. On March 13, 2012, an interdisciplinary core staffing team (interdisciplinary team) of the Service Agency met to consider claimant's eligibility for regional center services. The interdisciplinary team was comprised of the chief of clinical services, a staff psychologist, a school psychologist, a developmental pediatrician, and an intake service coordinator. The interdisciplinary team reviewed the Social Assessment by the intake service coordinator (Exh. 5), the Psychological Evaluation by Dr. Carrillo (Exh. 4), and claimant's school record and June 15, 2009 IEP (Exhs. 6 and 7). The interdisciplinary team considered whether the information showed claimant met eligibility criteria on the basis of mental retardation or a condition closely related to mental retardation or requiring treatment similar to that for an individual with mental retardation. The interdisciplinary team concluded that claimant "does not meet the definition of a developmental disability," for he has been diagnosed with mixed receptive-expressive language disorder, disorder of written expression, reading disorder, and borderline intellectual functioning. The interdisciplinary team found that claimant has not been diagnosed with mental retardation, he does not have seizures or epilepsy, his motor skills do not show evidence cerebral palsy, and he has not been diagnosed with autism. The interdisciplinary team determined that claimant does not have a substantial disability closely related to mental retardation or requiring treatment similar to that for individuals with mental retardation and is ineligible for regional center services.

8. On or about April 10, 2012, a Fair Hearing Request was filed on behalf of claimant, asserting that the test results by Dr. Carrillo do not conclusively "rule out" mental retardation. It was contended in the Fair Hearing Request that data from the psychological evaluation and social assessment "strongly suggest that claimant

suffers from a substantial disability closely related to mental retardation and/or requiring similar treatment.” This matter then ensued.

9. (A) In support of claimant’s request for regional center services, claimant’s counsel presented the testimony of Dr. Timothy Collister, a psychologist who has a clinical practice, has evaluated children in foster care and dependency court, and has performed assessments for regional centers. Dr. Collister reviewed materials, including the Psychological Evaluation by Dr. Carrillo, the Social Assessment, and claimant’s IEP.

(B) Based on his review of the data and results of the psychological tests administered to claimant, Dr. Collister proffered several criticisms of Dr. Carrillo’s conclusions. For example, Dr. Collister testified that, while claimant’s IQ was measured at 73 on the Wechsler, his IQ could actually be as low as 68 due to the standard error of measurement for the test. Coupled with his scores in the mild range of delay for adaptive or living skills and social skills under the Vineland, Dr. Collister opined claimant should be diagnosed with mild mental retardation. The psychologist further testified that claimant’s condition will not improve with rehabilitation and he will need services to assist him to obtain housing, employment, and medical care when he is an adult. Dr. Collister concluded that claimant’s disability is similar to mental retardation and he has deficits in language, learning, and cognitive deficits.

10. The opinion of Dr. Collister that claimant should be diagnosed with mild mental retardation based on his review of the results of the psychological tests was not persuasive for several reasons. First, Dr. Collister admitted that claimant’s difficulties in articulation, processing, and focusing, when combined with his varied levels of abilities, do not naturally lead to the conclusion that he has mild mental retardation. Rather, Dr. Collister indicated claimant may have a cognitive disorder, not otherwise specified, and recommended that claimant undergo a neuro-psychological evaluation. Second, Dr. Collister did not evaluate claimant, did not administer any psychological tests to him, and did not make a diagnosis. His opinions were based solely on his review of the written evaluations. Third, the weight of Dr. Collister’s opinion was undermined by his speculation that claimant has received educational services and functioned at school as a student with mental retardation. No evidence was presented to demonstrate that claimant received such educational services.

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds do not exist under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to grant claimant’s appeal and to over-turn the

determination of the Service Agency that he is not eligible for regional center benefits. Based on Findings 1 – 10 above, it was not established under Welfare and Institutions Code section 4512 that claimant has been diagnosed with a developmental disability or that he has a developmental disability that is a substantial disability for him.¹ Nor was it established that claimant has a condition that is closely related to mental retardation or requires treatment similar to that for an individual with mental retardation.

2. Section 4512, subdivision (a), defines “developmental disability” as a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. Developmental disability shall include mental retardation, cerebral palsy, epilepsy, and autism. Developmental disability shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

Section 4512, subdivision (1), defines “substantial disability” as the existence of significant functional limitations in three or more of seven areas of major life activity as appropriate to the age of the person. The seven areas of major life activity are (1) self-care; (2) receptive and expressive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency.

California Code of Regulations, title 17, section 54000, subdivision (c), further provides that a developmental disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders, where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis, or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of education performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

3. A person seeking eligibility for governmental benefits or services bears the burden of proving that he is eligible for or entitled to those benefits or services.

¹ All further section references are to the Welfare and Institutions Code.

(See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; *Greatorex v. Board of Adminis.* (1979) 91 Cal.App.3d 54, 57.) Further, Evidence Code section 500 states that, “[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” Because no statute or law specifically applies to the Lanterman Act, the standard of proof in this matter is preponderance of the evidence. (See Evid. Code, § 115.) Thus, claimant has the burden in this matter of proving his eligibility for regional center services under the Lanterman Act by a preponderance of the evidence.

4. Discussion—In this matter, claimant contended he has mental retardation or a disabling condition closely related to mental retardation or requiring treatment similar to that for mental retardation. Claimant made a valiant attempt to show he has a developmental disability and is eligible for regional center services by cross-examining the Service Agency’s witnesses and proffering the opinion following a records review by Dr. Collister. Claimant did not meet his burden of proof.

First, the probative evidence demonstrated that claimant has significant functional impairments or handicaps in the two life activities of receptive and expressive language and learning. Dr. Carrillo diagnosed claimant with receptive-expressive language disorder based on the results on the measures of his cognitive abilities and communication skills. The psychological evaluation and IEP also demonstrate that claimant has a disability in learning as shown by his deficits in reading and writing. Claimant’s IEP show that his learning disability arises from auditory processing deficits that interfere with his ability to focus, complete tasks, and understand complex information.

On the other hand, the evidence did not establish that claimant has handicaps in any other major life activities. He has no handicap in mobility, for he is ambulatory and able to take public transportation when he knows the routes. It cannot be found that claimant has handicaps in his capacity for independent living or economic self-sufficiency inasmuch as he is a student and has been living with his mother. Claimant argued that he has handicaps in self-direction based, in part, on his failures to bring proper supplies to class, to attend class, and to enroll in a new school, but such evidence can also be interpreted to mean that his mother has not been supportive of his academic achievement. Finally, the evidence of any handicaps in self-care was inconsistent. The Social Assessment demonstrated that claimant is able to do many things for himself, including preparing food, performing household and self-hygiene tasks, and purchasing food. The Psychological Evaluation and the results of the Vineland suggest claimant has mild delays in adaptive skills. Due to this inconsistency of the evidence in claimant’s self-help or adaptive skills, it cannot be found that he is handicapped in the major life activity of self-care.

Second, the evidence did not demonstrate that claimant has a developmental disability that originated before he turned 18 years old. He has not

been diagnosed with mental retardation, cerebral palsy, epilepsy, or autism. He has not been assessed to have a disabling condition that is closely related to mental retardation or requires treatment similar to that for persons with mental retardation. Claimant does have significant delays in cognitive functioning. Dr. Carrillo diagnosed claimant with borderline intellectual functioning, mixed receptive-expressive language disorder, disorder of written expression, and a reading disorder. While he criticized Dr. Carrillo's diagnosis and proffered the opinion that the data and test results from the psychological evaluation may be indicative of mild mental retardation, Dr. Collister was not able to definitively state that claimant has mental retardation or a condition closely related to mental retardation or requiring treatment similar to that for mental retardation. Because he did not evaluate claimant, Dr. Collister could only opine that claimant may have a cognitive disorder, not otherwise specified, and recommended that claimant undergo further evaluation.

In the absence of evidence that he has a developmental disability within the meaning of Welfare and Institutions Code section 4512, subdivision (a), claimant cannot be found to be eligible for regional center services at this time.

Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The appeal of claimant Leo C. is denied. The determination of the South Central Los Angeles Regional Center that claimant is not eligible for regional center services is sustained.

Dated: August 29, 2012

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.